Bail Slip

The Appellant/Accused namely Nagaraj was directed to be released on bail in and by the order of this Court dated 16.07.2004 in Crl.M.P.7560/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-9-2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.849 of 2004

Nagaraj .. Appellant/Petitioner

vs

The State represented by
The Inspector of Police
Ambur Rural Police Station
(Vellore District)
in Crime No.392/2001 .. Respondent/Complainant

Criminal appeal preferred under Sec.374 (2) of the Code of Criminal Procedure against the judgment of the Additional District and Sessions Judge, (Fast Track Court), Tirupattur, Vellore District, in S.C.No.143/2002 dated 21.5.2004.

For Appellant : Mr.T.R.Radhakrishnan
For Respondent : Mr.P.Kumaresan, A.P.P.

JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

The sole accused in a case of murder on being found guilty as per the charges under Sections 341, 506(ii) and 302 of I.P.C. and awarded life imprisonment along with a fine of Rs.2,000/- and default sentence under Sec.302 of IPC by the learned Additional Sessions Judge (Fast Track Court), Tirupattur, in S.C.No.143/2002, has brought forth this appeal.

2.The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.1 one Nandagopal, and the deceased Balakrishnan alias Md. Farooq, were friends. On the date of occurrence, namely 13.8.2001, both of them went to borrow money, and after getting money, both of them were coming in a TVS 50. On the way, they were to climb up since it was filled with sand. At that time, the deceased got down and P.W.1 was taking the

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vehicle up. When he just went in forward, he heard the distressing cry of the deceased, saw back and found the accused attacking the deceased with a knife. He just went nearby. Then, the accused fled away from the place of occurrence. Immediately, he informed to the wife of the deceased, P.W.3, and both of them took the deceased to the Government Hospital, Ambur, where he was declared dead. Then, an intimation was given to the police. P.W.1 went to the respondent Police Station and gave a statement to P.W.10, the Sub Inspector of Police, who was on duty at that time. The said statement is Ex.P1, on the strength of which, P.W.10 registered a case in Crime No.392/2001 under Sec.302 of I.P.C. The First Information Report, Ex.P15, was despatched to the Court.

(b) P.W.13, the Inspector of Police, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared Ex.P2, the observation mahazar, and Ex.P18, the rough sketch. Then, he conducted inquest on the dead body of Balakrishnan at the mortuary in the presence of witnesses and panchayatdars and prepared Ex.P17, the inquest report. He recovered the material objects from the place of occurrence. The dead body was caused to be photographed through P.W.9, the Photographer, and the photos and negatives are marked as M.Os.14 and 15 respectively. The Investigator gave a requisition to the hospital authorities for the conduct of autopsy.

(c) P.W.7, the Civil Surgeon, attached to the Government Hospital, Ambur, on receipt of the copy of the FIR, conducted autopsy on the dead body of Balakrishnan and found 9 injuries. She gave a postmortem certificate, Ex.P9, with her opinion that the deceased would appear to have died of shock and haemorrhage and injuries to vital organ namely brain on both temporal region.

(d) Following the same, the Investigator arrested the accused on 14.8.2001. He volunteered to give a confessional statement, which was recorded. The admissible part is marked as Ex.P4, pursuant to which, he produced M.O.10, knife, which was recovered under a mahazar, Ex.P5. Then, he took the police party to his house and produced M.Os.11 and 12, clothes, which were recovered under Ex.P6, the mahazar. He was sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body, and the weapon of crime recovered from the accused on confession, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in two reports namely Ex.P12, the Chemical Analyst's report, and Ex.P13, the Serologist's report. On completion of investigation, the Investigator filed the final report.

3.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 13 witnesses and also relied on 18 exhibits and 15 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witness was examined. The lower Court heard the arguments advanced and scrutinised the evidence both oral and documentary. The learned trial Judge took the view that the prosecution has proved the case beyond reasonable doubt, found the appellant/accused guilty and awarded life imprisonment under Sec.302 of IPC, while he has not given any sentence in respect of the other charges. Hence, this appeal at the instance of the appellant/accused.

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4.The learned Counsel advancing his arguments on behalf of the appellant in short, would contend that according to the prosecution, there were three eyewitnesses namely P.Ws.1, 4 and 12; that all these witnesses have turned hostile, and thus, the prosecution had no direct evidence to offer; that the circumstance which was relied on by the prosecution, was the recovery part; that so far as the recovery was concerned, the only witness examined in that regard, was P.W.5; that he would state that all the documents pertaining to the recovery of weapon of crime and other material objects, were prepared at the Police Station, and he also signed in those documents, at about 7.00 P.M., on the date of arrest; that it would be quite clear that those documents were prepared at the Police Station and not at the place of recovery; that this would go to show that such a recovery was not at all made; that all the documents were prepared for the purpose of suiting the prosecution case; and that under the circumstances, the recovery could not be relied upon.

5.Added further the learned Counsel that according to P.W.1, he gave an oral statement to the Sub Inspector of Police, and the same was reduced into writing by him; that according to P.W.10, the Sub Inspector of Police, it was a written complaint; that under the circumstances, Ex.P1, what is now before the Court, is doubtful; that apart from that, the weapon of crime namely knife, which was recovered, though subjected to chemical analysis, did not contain human blood at all; that in such circumstances, the prosecution had no evidence to offer; but, the lower Court on certain circumstances which were not relevant to the prosecution case, found him guilty, and hence, he is entitled for acquittal in the hands of this Court.

6.The Court heard the learned Additional Public Prosecutor on the above contentions.

7.The Court paid its anxious consideration on the submissions made.

8.In the instant case, one Balakrishnan, the husband of P.W.3, was attacked in an incident that took place at the place and time, and following the same, he succumbed to the injuries. The inquest was made by the Investigating Officer, and the dead body was subjected to postmortem by P.W.7, the Doctor, who gave a certificate, Ex.P9, wherein she has opined that the deceased died out of shock and haemorrhage and also due to the injury to the vital organ. Apart from that, this fact that he died out of homicidal violence was never questioned by the appellant/accused at any stage of the proceedings. Hence, it could be recorded so.

9.In order to substantiate the fact that it was the appellant/accused who attacked the deceased at the time and place of occurrence with the knife, as a result of which, he died, the prosecution rested its case on the direct evidence by examining P.Ws.1, 4 and 12. All these three witnesses have turned hostile, and no one of these witnesses spoke about the presence of the accused either, or that he attacked him. Thus, the evidence of these witnesses were not available to the prosecution. In the instant case, the circumstance relied on by the prosecution was the recovery of M.O.10, knife, and M.Os.11 and 12, clothes, from the accused. According to the Investigating Officer, the appellant/accused was arrested

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at about 4.00 P.M., and he took him along with P.W.5 and another witness and produced M.O.1, knife, which was recovered under Ex.P5, the mahazar, and he also took him to the house where he produced M.Os.11 and 12, clothes, and they were also recovered under a cover of another mahazar. The only witness examined in that regard, was P.W.5, who has categorically spoken that all the documents pertaining to the recovery, were all prepared and his signatures were obtained in the same only at the Police Station. Thus, it would go to show that all these mahazars alleged to have been prepared by the Investigating Officer at the place of recovery, were nothing but false, and such documents cannot be relied upon for any purpose. Hence, the confession alleged to have been made by the accused, and the recovery of the material objects also fall to ground. Under the circumstances, the prosecution had no direct evidence or circumstantial evidence to offer. Therefore, it can be held that the prosecution has miserably failed to prove the case before the lower Court; but, the lower Court has not considered the above aspects of the matter and found the accused guilty. This Court is of the view that the judgment of the lower Court has got to be set aside, and the appellant/accused is entitled for acquittal.

10.In the result, this criminal appeal is allowed, setting aside the judgment of the lower Court. The appellant is acquitted of the charges levelled against him. The fine amount paid by him will be refunded to him. The bail bond executed by him shall stand terminated.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To

1. The Additional District and Sessions Judge
(Fast Track Court),
Tirupattur, Vellore District.

2. -Do-Thro' The Principal Sessions Judge,
Vellore District.

3. The Inspector of Police
Ambur Rural Police Station
(Vellore District)
in Crime No.392/2001

4. The Public Prosecutor
High Court, Madras.

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5. The Director General of Police,
Madras.

6. The District Collector,
   Vellore District.

7. The Additional District Munsif cum
   Judicial Magistrate,
   Ambur.

8. The Chief Judicial Magistrate,
   Vellore District.

9. The Superintendent,
   Central Prison,
   Vellore, Vellore District.

1 cc To Mr.T.R.Radhakrishnan, Advocate, SR.46037.

C.A.No.849 of 2004

BV(CO)
RVL 12.10.2006

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